MOTION FILED
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No. 98-167

In The

Supreme Court of the United States

October Term, 1997

Arizonans for Official English and Robert D. Park,
Petitioners,

vs.

State of Arizona; Jane Dee Hull, Governor of Arizona; Grant Woods, Attorney General of Arizona; Armando Ruiz; Linda Aguirre; John Philip Evans; Rosie Garcia; Candido Mercado; Manuel Pena, Jr.; Peter Rios, Jr.; Macario Saldate IV; Federico Sanchez; and Victor Soltero
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Arizona

MOTION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF ARIZONA LEGISLATORS IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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Donald W. Jansen
Counsel of Record for Amici
State House of Representatives
1700 W. Washington Street
Phoenix, Arizona 85007
(602) 542-5544

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MOTION FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE*

Movants are seventeen members of the Arizona State Legislature, including the Speaker, former Speaker, Speaker *Pro Tempore*, and Majority Leader of the Arizona House of Representatives (a complete list is contained in the attached proposed brief). Although Counsel for the State and for Petitioners have consented to the filing of this brief, Counsel for the private Respondents, Stephen G. Montoya, refused consent.

Movants are interested in the decision in this matter both because of their own interest in proposing, debating and ultimately enacting or rejecting legislation in one common language (rather than having legislators propose, deliberate, and debate legislation in many languages), and because of their concern that the decision of the Arizona Supreme Court in this case will inevitably lead to increasing demands by government employees for costly multilingual services, not for the public good, but due to the employees' own personal beliefs and interests. Members of Congress, two other states, and several organizations have filed an *amici* brief in support of the Petition; Movants believe that it would assist the Court to hear also from Arizona elected representatives.

Now, therefore, Movants respectfully move the Court for leave to file the attached proposed brief *amicus curiae* in support of the Petition.

Donald W. Jansen
Counsel of Record for Amici
State House of Representatives
1700 W. Washington Street
Phoenix, Arizona 85007
(602) 542-5544

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Pursuant to Rule 37.3 of the Rules of this Court, *amici curiae* submit this brief in support of Petitioners.[1] Consent letters from counsel who have consented to the filing of this brief have been lodged with the Clerk of the Court.

I. INTEREST OF THE *AMICI*

The *amici curiae* are seventeen members of the Arizona State Legislature. The *amici* are: Speaker of the House of Representatives Jeff Groscost, Former Speaker Don Aldridge, House Majority Leader Lori Daniels, House Speaker *Pro Tempore* Joe Hart, Representatives Debra Brimhall, Robert Burns, Dean Cooley, Jake Flake, Linda Gray, Tom Horne, Marilyn Jarrett, Karen Johnson, Wes Marsh, Jean McGrath, Tom Smith, Lela Steffey, and Jim Weiers.

The *amici* are interested in the decision in this matter because they want to conduct the legislature's own collective acts and deliberations in one language as mandated by Article XX, Par. 8 of the Arizona Constitution. In particular, *amici* want the continued ability to propose, debate and ultimately, to enact legislation in one common language - the English language - rather than having legislators propose legislation, amendments, or resolutions in other languages. The *amici* are also concerned that a decision finding Article XXVIII unconstitutional might use sweeping language that would greatly expand the State's linguistic obligations and would detrimentally impact Arizona's future because of increased

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[1]No counsel for either party authored this brief *amici curiae*, either in whole or in part. Furthermore, no persons other than *amici curiae* (or counsel) contributed financially to the preparation of this brief.

financial obligations. Additionally, the *amici* believe that the legislative authority, and not government employees, should be able to determine the manner and message when the state government speaks. The *amici* submit this brief to inform the Court of concerns that are unique to the Arizona Legislature but which ultimately impact all Arizonans. Lastly, the *amici* are interested in supporting the People of Arizona who adopted Article XXVIII by a popular vote.

II. ARGUMENT

A. Decisions Finding Article XXVIII Unconstitutional Could Lead to Expanded State Obligations and the Subsequent Financial Burden to the State of Arizona Could Be Enormous.

The Arizona Supreme Court below stated:

> Significantly, in finding the Amendment unconstitutional, we do not hold, or even suggest, that any governmental entity in Arizona has a constitutional obligation to provide services in languages other than English, except, of course, to the extent required by federal law.

Ruiz v. Hull, 1998 WL 203081 *19 (Ariz. 1998) *Amici*, nevertheless, are concerned that the underlying rationale of that opinion and the opinion of the Ninth Circuit in Yniguez v. Arizonans for Official English, 69 F.3d 920 (9th Cir. 1995), vacated on remand, will inevitably lead to claims of constitutional rights to multilingual services unless this Court clarifies the law in this area to disallow such claims.

Amici respectfully request this Court to accept review in this case. A decision, like the one penned by the Ninth Circuit

en banc majority, could redefine the relationship between government employers and employees. The Ninth Circuit's *en banc* decision threatened to create new limitations on government speech. For example, citizens may claim the right to have legislative enactments and judicial opinions published in languages other than English. Legislators and constituents could claim a right to simultaneous multilingual translation of legislative hearings and debates. If languages other than English are required for use by government officials and employees, the burden to the State could be enormous. While the Respondents do not expressly contend that there will be an affirmative duty placed on the State to provide more effective government service by employing multilingual employees and translators, someone might try to expand a broadly-worded decision to argue for such a result. Such a decision could arguably create new expectations of receiving government services in many different languages. Providing vast new language services would be catastrophic to Arizona's financial health.

It is for just these reasons that courts, to date, have consistently chosen to refrain from requiring the government to provide assistance in languages other than English. Toure v. United States, 24 F.3d 444 (2d Cir. 1994)(no right to notice of administrative seizure in French); Soberal-Perez v. Heckler, 717 F.2d 36 (2d Cir. 1983) (no right to social security notices and services in Spanish and asserting, in dicta, that English is the national language of the United States); Guadalupe Org., Inc. v. Tempe Elementary School Dist. No. 3, 587 F.2d 1022, 1027 (9th Cir. 1978) (no right to bilingual education); Frontera v. Sindell, 522 F.2d 1215 (6th Cir. 1975) (no right to civil service carpentry exam in Spanish).

In addition to Arizona and numerous other State governments, the federal government has also recognized that the use of a common language, subject to constitutional constraints, is useful in minimizing expenditures for multilingual services. This is evidenced by the Sixth Circuit Court of Appeals' opinion in Frontera, where the court stated:

> Our national interest in English as the common language is exemplified by 8 U.S.C. §1423, which requires, in general, English language literacy as a condition to naturalization as a United States Citizen.
>
> Statutes have been enacted which provide exceptions to our nation's policy in favor of the English language to protect other interests and carry out the policies of the Fourteenth Amendment, but these exceptions do not detract from the policy or deny the interests the various levels of government have in dealing with the citizenry in a common language. Id. at 1220.

The precise concerns of the *amici* were expressed in Frontera v. Sindell, when the court stated, "In order to accommodate all nationality groups, the city might be compelled to establish a department of languages with a staff of linguists . . . ." (Id. at 1219). The *amici* are concerned that if the Court finds Article XXVIII unconstitutional, it will open the door for litigants to demand expanded language assistance obligations. Providing all government services in all of the languages spoken in Arizona would quite possibly lead to curtailed funding for existing substantive programs and agencies of government. These are legitimate choices for

the allocation of finite resources that the legislature makes in every budget. The legislature should be allowed to continue to make these policy decisions free from expensive mandates stemming from the state's own employees' claimed right to choice of language on the job.

B. The Initiative Process Deserves Great Deference Because the Mechanism Is Direct Rather than Representative.

The Arizona Constitution provides Arizona's citizens with the power to directly create law through the initiative process. Ariz. Const. art. IV, pt. 1, §§ 1-15. Legislative authority which is vested in its citizenry through the initiative process is a distinctive characteristic found only in twenty-four States.[2] Accordingly, this characteristic should be entitled to significant deference. Indeed, Arizona courts have been exceedingly reluctant to interfere with the initiative process. *See, e.g.*, Fairness and Accountability in Ins. Reform v. Greene, 180 Ariz. 582, 886 P.2d 1338 (1994); Tilson v. Mofford, 153 Ariz. 468, 737 P.2d 1367 (1987); Iman v. Bolin, 98 Ariz. 358, 404 P.2d 705 (1965); Adams v. Bolin, 74 Ariz. 269, 247 P.2d 391 (1952).

Courts have the authority to interpret the law created by the passage of an initiative, and the *amici* do not wish to suggest the contrary. Rather, the *amici* merely wish to indicate that the initiative power is the supreme method of

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[2]Tommy Neal, *The Voter Initiative*, National Conference of State Legislatures, Legis Brief, Vol. 1, No. 38, October 1993.

proposing legislation and amendments to the State Constitution. The Arizona Supreme Court has recognized the special significance of initiatives as reiterated by the appellate court in Turley v. Bolin, 27 Ariz. App. 345, 554 P.2d 1288, (1976) when the court noted that:

> [T]he provisions of the Arizona Constitution relating to the reservation by the people of initiative and referendum rights show:
> ' . . . beyond the possibility of contradiction that the people themselves deliberately and intentionally announced that, by its adoption, they meant to exercise their *supreme sovereign power* directly to a far greater extent than had been done in the past, and that the legislative authority, acting in a representative capacity only, was in all respects intended to be subordinate to direct action by the people. [Emphasis added.] Id. at 348, 554 P.2d at 1291.

Since the legislative process that was the source of Article XXVIII was direct and not representative, there can be no question as to the will of the Arizona electorate. This is an important issue on which the people have spoken. This Court should review the issue in light of this direct expression by the people and effectuate their will to the greatest extent possible.

III. CONCLUSION

For all the reasons stated in this brief, the *amici* respectfully urge that the Court grant the petition to review this case.

Respectfully submitted,

Donald W. Jansen
State House of Representatives
1700 W. Washington Street
Phoenix, Arizona 85007
(602) 542-5544